

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Commerce and Consumer Services Committee

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BILL: CS/SB 572

SPONSOR: Commerce and Consumer Services Committee and Senator Garcia

SUBJECT: Consumer Protection

DATE: March 9, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siebert	Cooper	CM	Fav/CS
2.	_____	_____	DS	_____
3.	_____	_____	CJ	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

This committee substitute provides that upon the Governor's declaration of a state of emergency, it is a second-degree misdemeanor for any person to offer goods and services for sale to the public during the duration of the emergency unless person possesses an occupational license. Religious, charitable, fraternal, civic, educational or social organizations are exempt.

This committee substitute also authorizes the Governor, in the emergency declaration, to exempt businesses who sell essential commodities from curfew restrictions. In addition, the Governor may direct local governments to open landfills and operate with extended hours to allow for disposal of contaminated or spoiled goods.

This committee substitute amends sections 501.160 and 252.36 of the Florida Statutes.

## II. Present Situation:

### Price Gouging Violations

After four hurricanes struck Florida this past year, some individuals and merchants increased prices for essential goods and services in the storm affected areas.

In response, the Office of Attorney General received over 8,700 complaints regarding price gouging. Out of those complaints, 13 law suits were filed for violations of price gouging and unfair and deceptive trade practices.

The Department of Agriculture and Consumer Services also received price gouging complaints. The Division of Consumer Services (division) received 6,526 calls resulting in 3,033

investigations. The division received 584 gasoline price gouging complaints resulting in 5 warning letters and recommendations for fines in two cases. The Bureau of Investigative Services (BIS) processed 284 tips received from citizens and the division. Out of those, a total of three criminal cases were accepted for criminal prosecution, and charges were filed. All cases worked by BIS not resulting in criminal prosecution were forwarded to the division for possible administrative actions.

Under current law, the state may seek civil penalties for such violations. Florida prohibits the rental or sale of essential commodities for unconscionable prices during a declared state of emergency.<sup>1</sup> A commodity is defined as any goods, services, materials, merchandise, supplies, equipment, resources, or other article of commerce which includes food, water, ice, chemicals, petroleum products, and lumber necessary for consumption or use as a direct result of the emergency.<sup>2</sup> A price is unconscionable if there is a gross disparity between the price charged for the commodity and the average price of that commodity during the 30 days prior to a declaration of a state of emergency, with exceptions.<sup>3</sup> A price is also unconscionable if the amount charged “grossly exceeds” the average price during the 30 days prior to a declaration of a state of emergency.<sup>4</sup> Penalties that may be assessed include a civil penalty of not more than \$1,000 per violation with an aggregate total not to exceed \$25,000 for any 24-hour period.<sup>5</sup>

Additionally, current law makes unlawful all unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.<sup>6</sup> The civil penalty for willfully violating this section is a penalty of not more than \$10,000 for each violation and \$15,000 for each violation that victimizes a senior citizen or handicapped person.<sup>7</sup>

### **Governor’s Executive Powers**

It is generally understood that during a declared state of emergency, the Governor has extensive authority to act as he or she deems necessary. Section 252.36(1), F.S., provides, in part, that “in the event of an emergency beyond local control, the Governor...may assume” or delegate “direct operational control over all or any part of the emergency management functions within this state...” In addition, the Governor may “issue executive orders, proclamations, and rules” which “shall have the force and effect of law.” Subsection (5) specifically authorizes the Governor to, among other things, use all resources of the state government and of each political subdivision of the state, as reasonably necessary to cope with the emergency.

The Governor is also directed to “take such action and give such direction to state and local law enforcement officers,” and state health officials as may be “reasonable and necessary” to secure compliance with the State Emergency Management Act and the Florida Hazardous Materials Emergency Response and Community Right-To-Know Act in ch. 252, F.S.

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<sup>1</sup> Section 501.160(2), F.S.

<sup>2</sup> Section 501.160(1)(a), F.S.

<sup>3</sup> Section 501.160(1)(b), F.S.

<sup>4</sup> *Id.*

<sup>5</sup> Section 501.164, F.S.

<sup>6</sup> Section 501.204, F.S.

<sup>7</sup> Section 501.2075, F.S.

A declared State of Emergency is limited to 60 days, unless renewed by the Governor or terminated by the Legislature.

### **Local Occupational License Taxes**

Chapter 205, F.S., authorizes counties and municipalities to issue local occupational licenses, and levy occupational license taxes for the privilege of engaging in or managing any business, profession or occupation within its jurisdiction.

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 501.160, F.S., to declare it a second-degree misdemeanor for a person to offer goods and services for sale to the public during a declared state of emergency, unless the person possesses a county or municipal occupational license. Commission of a misdemeanor of the second degree is punishable by imprisonment of up to 60 days or a fine up to \$500. Religious, charitable, fraternal, civic, education and social organizations are exempt from the requirement to have an occupational license.

During a declared state of emergency, this committee substitute provides law enforcement has reasonable cause to detain a person accused of price gouging and does not possess an occupational license as provided in this committee substitute.

**Section 2** amends s. 252.36, F.S., to authorize the Governor, in the emergency declaration, to exempt businesses who sell essential commodities from curfew restrictions. In addition, the Governor may direct local governments to open landfills and operate with extended hours to allow for disposal of contaminated or spoiled goods.

**Section 3** provides an effective date of July 1, 2005.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

This committee substitute provides that any person offering goods and services for sale during a state of emergency must have an occupational license, unless specifically exempted.

**C. Government Sector Impact:**

Government entities that elect to pursue prosecution for violations of this committee substitute will incur related legal and administrative costs.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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## **VIII. Summary of Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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